Government of **Western Australia**
Department of **Water and Environmental Regulation**

Guideline

Industry Regulation Guide to Licensing

Activities regulated under the:

- *Environmental Protection Act 1986*
- *Environmental Protection Regulations 1987*

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Preface

The Department of Water and Environmental Regulation (Department) administers a range of legislation as part of the delivery of its regulatory functions. One of the Department's functions is to administer works approvals, licences, and registrations of prescribed premises under Part V Division 3 of the *Environmental Protection Act 1986* (EP Act).

Assessment and regulation of a premises under Part V does not exempt an occupier from requiring other approvals or from the Department taking action under the Department's other functions. These functions include, but are not limited to, requirements under the *Rights in Water and Irrigation Act 1914*, the *Country Areas Water Supply Act 1947*, the *Contaminated Sites Act 2003*, or under other parts of the EP Act.

The Department conducts all assessments it undertakes in accordance with its *Regulatory Best Practice Principles*, which are available on the Department website (Refer: *Related documents*).

Any excerpts of legislation contained in this document are current at the date of this document's publication.

Any suggestions or comments regarding the content of this document can be addressed to the Department by email at info@dwer.wa.gov.au.

Summary

This document provides guidance on the licensing framework for those proposing to construct prescribed premises or undertake activities which are regulated by the Department under Part V Division 3 of the EP Act.

Guidelines provide direction on how the Department interprets and applies the legislation it administers, and its policies. Guidelines are not mandatory considerations, however, the Department's guidelines assist applicants to provide information in the best possible manner to ensure the efficient and effective assessment of their application. Applications that do not align with the appropriate guidelines may result in protracted assessment timeframes, and if the information provided is not sufficient for the Department to complete its assessment, the application may be declined or refused.

General information about the process of preparing, submitting, assessing and deciding applications for works approvals, licences (including transitioning from a works approval to a licence), amendments, transfers, surrenders, and registrations of prescribed premises is provided. For specific information on the technical aspects of a works approval or licence application, please refer to *Licences and works approvals* on the Department website (Refer: *Related documents*) or contact the Department.

1 Legislative context

1.1 Part V of the EP Act

The Department has responsibility under Part V Division 3 of the EP Act for granting works approvals and licensing or registration of prescribed premises.

Regulation 5 of the *Environmental Protection Regulations 1987* (EP Regulations) specifies that any premises listed in Schedule 1 of the EP Regulations is a prescribed premises.

A premises becomes prescribed under Schedule 1, Parts 1 and 2 where the activities on the premises meet the definition provided, and the threshold of production or design capacity for an activity on that premises is met or exceeded.

Any work on, or in relation to, a premises which causes it to become, or to become capable of being, a prescribed premises is an offence unless it is done in accordance with a works approval. This means an occupier must have a works approval before building a prescribed premises (section 52 of the EP Act).

If an emission is caused or increased, or an occupier alters or permits to be altered, the nature of the waste, noise, odour, or electromagnetic radiation emitted or discharged from the prescribed premises, the occupier commits an offence unless they are the holder of a licence or works approval and the emission is in accordance with any conditions to which the licence or works approval is subject. This means an occupier must have either a works approval or a licence to authorise emissions or discharges to occur, and must comply with the conditions of that works approval or licence (sections 53 and 56 of the EP Act).

Before carrying out works or operating a facility, approvals may be required from other statutory bodies including local government authorities. Holding an authorisation from the Department does not exempt a proponent from the requirement to obtain such approvals.

Under section 38(4) of the EP Act, the Department has a duty to refer to the Environmental Protection Authority (EPA) any proposal it becomes aware of that appears to be a significant proposal. A significant proposal is one that is likely, if implemented, to have a significant impact on the environment.

NOTE: Refer: *Related documents* below for a link to the EPA website for the *Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2016* and *Statement of Environmental Principles, Factors and Objectives*.

In exercising its duties, the Department must ensure that where a licence or works approval, or an amendment to a licence or works approval, is related to a referred proposal and a Ministerial Statement is in effect for that proposal, the CEO does not make a decision that is contrary to, or otherwise than in accordance with the Ministerial Statement under sections 54(4), 57(4), and 59B(7) of the EP Act. This means that works approvals and licences must be consistent with Ministerial

Statements and associated documents (such as approved management plans) for significant proposals that have been assessed under Part IV of the EP Act.

As a decision-making authority, the Department does not have to make any decision to approve an application for a works approval or licence where other government approvals preclude implementation. Where it is practical to do so, the Department will parallel process any applications it receives concurrently with assessments by other authorities, but may defer a decision on the application until the other authority has made a final decision.

As specified in the *Parallel Decision-Making Policy*, where amendment, licence or works approval applications are related to a proposal referred under Part IV, the Department will consider each application case-by-case, to determine whether it is suitable for parallel decision-making or will be parallel processed. The Department will engage early with the EPA and have regard to the degree of overlap between the subject matter of the application and the key environmental factors being considered by the EPA. Where the Department determines to parallel process an application, it will be progressed to the furthest extent practicable, which may include providing draft documents to the applicant for comment. The Department will aim to finalise parallel processed applications concurrently with the Ministerial Statement where possible, or shortly after the Ministerial Statement is issued.

1.2 Offences under Part V of the EP Act

There are a number of offences relating to Part V of the EP Act. These include but are not limited to:

- causing a premises to become a prescribed premises without a works approval (section 52 of the EP Act);
- altering a prescribed premises, which causes an emission or alters the nature of volume of the waste, noise, odour or electromagnetic radiation emitted, otherwise than in accordance with a works approval, licence, or closure or environmental protection notice (section 53 of the EP Act);
- causing or increasing emissions or altering the nature of waste discharged from a prescribed premises, not in accordance with a licence and any conditions to which the licence is subject (section 56(1) of the EP Act);
- contravenes a condition of a works approval or licence (sections 55 and 58 of the EP Act);
- failure to provide a monitoring report, analysis of the data, or failure to carry out a monitoring program under a condition of a licence or works approval (sections 55 and 58 of the EP Act);
- non-compliance with a condition of an environmental protection notice, closure notice, or prevention notice (sections 65, 68A and 73A of the EP Act); and
- general offences relating to pollution or unreasonable emissions (section 49), environmental harm (sections 50A, 50B and 50C), and notification of certain discharges of waste (section 72 of the EP Act).

Under section 112 of the EP Act it is an offence to give, or to cause to be given, false or misleading information.

If any of the above offences are committed, the Department will take appropriate enforcement action in accordance with the Department's *Compliance and Enforcement Policy,* which can be found on the Department website (Refer: *Related documents*).

1.3 EP Regulations

The following regulations are applicable to all premises, including premises that are not prescribed premises:

- *Environmental Protection (Noise) Regulations 1997*; and
- *Environmental Protection (Unauthorised Discharges) Regulations 2004*.

The Department also administers regulations that are industry-specific, including:

- *Environmental Protection (Abattoirs) Regulations 2001*;
- *Environmental Protection (Abrasive Blasting) Regulations 1998*;
- *Environmental Protection (Concrete Batching and Cement Product Manufacturing) Regulations 1998*;
- *Environmental Protection (Controlled Waste) Regulations 2004*;
- *Environmental Protection (Metal Coating) Regulations 2001*; and
- *Environmental Protection (Rural Landfill) Regulations 2002*.

NOTE: A complete set of Regulations is available from the website of the Department of Justice, Parliamentary Counsel's Office (Refer: *Related documents*).

2 Prescribed premises

Regulation 5 of the EP Regulations specifies that any premises listed in Schedule 1 of the EP Regulations is a prescribed premises. Under Schedule 1, prescribed premises are organised into categories with a corresponding category number, category description and production or design capacity.

A premises is a prescribed premises under Schedule 1 if the activities on the premises meet the category description, and the production or design capacity threshold for that activity is met or exceeded.

A works approval, licence, or registration for a prescribed premises is issued to the individual person or company who is in control or occupation of the premises (the occupier), whether or not they are the owner of the premises.

The Department is progressively publishing a series of guidance documents that provide advice on the regulatory scope for each category under Schedule 1 of the EP Regulations. These documents are currently described as Fact Sheets and are

available on the Department website under *Licences and Works Approvals / Publications* (Refer: *Related documents*).

2.1 Categories in Schedule 1 of the EP Regulations

Schedule 1 of the EP Regulations is divided into two parts.

Prescribed premises in Part 1 are higher risk premises based on:

- the type of activity;
- a higher complexity of process;
- higher production or design capacity; and
- higher risk emissions.

Occupiers of Part 1 prescribed premises require a works approval to undertake works to construct the premises or works that may cause an emission or alter the nature or volume of the waste, and a licence to emit or discharge waste from the prescribed premises. Failure to obtain either of these may constitute an offence under the EP Act.

Prescribed premises in Part 2 of Schedule 1 are lower risk premises based on:

- the type of activity;
- the complexity of processes;
- the production or design capacity; and
- lower risk emissions.

Part 2 prescribed premises are subject to a works approval to undertake works, but the occupier may apply to the Department to be registered (Refer: Section 8: *Registrations*) instead of applying for a licence.

2.2 Production or design capacity

Production or design capacity for individual categories of prescribed premises are specified in Schedule 1 of the EP Regulations. If either the production or design capacity of the premises meets or exceeds the threshold specified in Schedule 1, the premises is a prescribed premises.

Applicants should ensure the description of their production or design capacity in their application is expressed in the same terms (units) as the premises category in Schedule 1.

The terms ‘production capacity’ and ‘design capacity’ are not defined in the EP Act or the EP Regulations. The Department considers that:

- production capacity is the rate at which a product is produced as relevant to the description of the prescribed premises category; and
- design capacity is the maximum capacity for which the facility or equipment is designed to receive, handle, process, contain or emit, as relevant to the description of the prescribed premises category.

The Department's assessment of the capacity at which an activity can be undertaken generally assumes that the activity is, or will be, undertaken 24-hours a day, 365 days a year. Where the occupier can demonstrate the activity is restricted in some way (for example, by conditions of a planning approval), the Department may determine capacity to be lower. Restrictions must be real and evident, not factors that can easily change such as voluntary commitments by the occupier or current level of market demand.

For premises with many separate stages or steps in the process, the rate-limiting stage should be used to determine production or design capacity. A flow chart detailing the rate of production of each stage should be used.

For some categories, there is no minimum threshold of production or design capacity. For premises within these categories, the merits of each case should be considered in determining whether the premises is prescribed. In general, most commercial operations that meet the definition of the category will be considered as prescribed, while domestic, household or small scale educational operations will not be considered prescribed.

Where they have been published, fact sheets for each category of prescribed premises provide more information on how to determine production or design capacity. For complex premises or circumstances, occupiers should seek specific advice from the Department on how to determine production or design capacity.

2.3 Prescribed premises boundaries

The boundary of a prescribed premises should be proposed by the applicant and identified in their application. The Department will make the final decision on the boundary of the prescribed premises as part of the application assessment process. Cadastral boundaries will typically be used as the starting point for determining premises boundaries. Other factors will be taken into consideration, such as excluding large areas unrelated to the primary activity on the prescribed premises, or areas under the control of other people.

Prescribed premises boundaries must:

- encompass the whole area on which the relevant activity on the prescribed premises takes place and from which emissions and discharges from that activity would occur;
- define an area under the control of the applicant;
- be clearly and unambiguously described; and
- encompass a continuous area, except for where the area is bisected by a road, rail or waterway reserve.

The complexities of tenure and use arrangements for ports established under the *Ports Authority Act 1999* may mean some or all of the above criteria do not apply to the boundaries of port premises. These issues will be dealt with by the Department on a case-by-case basis. Where similar circumstances exist at other premises, the

Department will also consider all factors including other legislation to make a determination on the boundary.

Section 62A(3) of the EP Act allows for conditions to be imposed to require specified monitoring programs. These monitoring programs may extend beyond the boundary of a prescribed premises. This means it is not necessary for the premises boundary to be extended to include all monitoring locations.

3 Works approvals

Section 52 of the EP Act specifies that the occupier of a premises who carries out any work on or in relation to the premises, which causes the premises to become, or to become capable of being, a prescribed premises, commits an offence unless the occupier does so in accordance with a works approval. Refer to Section 13.1 for guidance on *Applications for a works approval, licence, registration or amendment*.

The Department's *Guidance Statement: Decision Making* sets out the process for determining whether proposed works require a works approval (Refer: *Related documents*). A works approval will contain appropriate conditions to prevent, control, abate or mitigate pollution or environmental harm during the construction and environmental commissioning phases of a project.

If works involve the clearing of native vegetation, a clearing permit will be required unless an exemption applies. Refer to Section 7: *Clearing native vegetation* for further guidance on applying to clear native vegetation as part of a works approval application.

Subject to any other necessary approvals or restrictions (including but not limited to Part IV, native vegetation clearing, and state or local government planning approvals) site preparation works can be undertaken without works approval from the Department. However, the Department cannot guarantee that a works approval or licence will be approved even if substantial and costly preparation works have been undertaken.

Preparatory works may include clearing, levelling and construction of access roads; construction of facilities not part of the prescribed premises activities such as carparks and office buildings; and the establishment of hardstands for use in construction works. Occupiers of premises should avoid constructing any infrastructure that could be considered as a control in relation to emissions and discharges, such as impermeable hardstands for a processing plant or for stockpiles of input, product or waste. Similarly, infrastructure for managing stormwater drainage potentially contaminated by the activities on the premises, may be considered as a control of emissions and discharges and should not be constructed prior to the assessment of the works approval application. For large scale premises, occupiers should consult the Department on any planned preparatory works.

Construction may begin on approved works from the start date of the works approval. However, third parties have appeal rights against the conditions, and the holder of a works approval should be aware of the possibility of an appeal determination against

one or more conditions. For further information about appeals, refer to Section 18: *Appeals*.

4 Transition from works approval to licence

Section 57(2) of the EP Act requires works completed under a works approval to be completed to the CEO's satisfaction in accordance with the relevant conditions of the works approval, before a licence application for the premises may be assessed by the Department.

The Department recognises that occupiers will want to start operations as soon as construction of works is complete, during the time taken to assess the licence application. To facilitate this, the Department uses a risk-based approach to determine whether a premises can undertake environmental commissioning and operate under a works approval, while the Department assesses the licence application.

The phases that may occur during the transition from a works approval to a licence include:

- *Construction phase* – This phase begins upon the grant of the works approval and ends once the Environmental Compliance Report and / or Critical Containment Infrastructure Report (CCIR) (as required) is submitted to the Department for verification (refer to Section 4.1: *Confirmation of works*).
- *Environmental commissioning phase* – Where environmental commissioning is authorised under the works approval this phase commences after the construction phase. Works approval conditions will allow and control limited operation for the purposes of optimising plant and equipment to meet predicted emissions. In general, this phase relates to "end of pipe" emissions. Refer to Section 4.2: *Environmental commissioning of works* for information on environmental commissioning.
- *Time limited operations phase* – Time limited operations may be authorised under a works approval. Once the Department has verified that all reports have been submitted to demonstrate that works have been completed in accordance with the conditions of a works approval, time limited operations may commence (see Confirmation of Works below). This phase allows for time limited operations for the purpose of transitioning to licensed operations. The time limited operations will be subject to works approval conditions. Refer to Section 4.3: *Time limited operations phase* for information on time limited operations.

Not all works approvals will authorise environmental commissioning and time limited operations. There are four 'pathways' for transitioning between a works approval and a licence. The Department uses a risk based approach to determine which 'pathway' a works approval shall follow to transition to a licence. These pathways are identified in Figure 1 below. The conditions of the works approval will specify when an applicant can move through the construction, environmental commissioning and time limited operations phases.

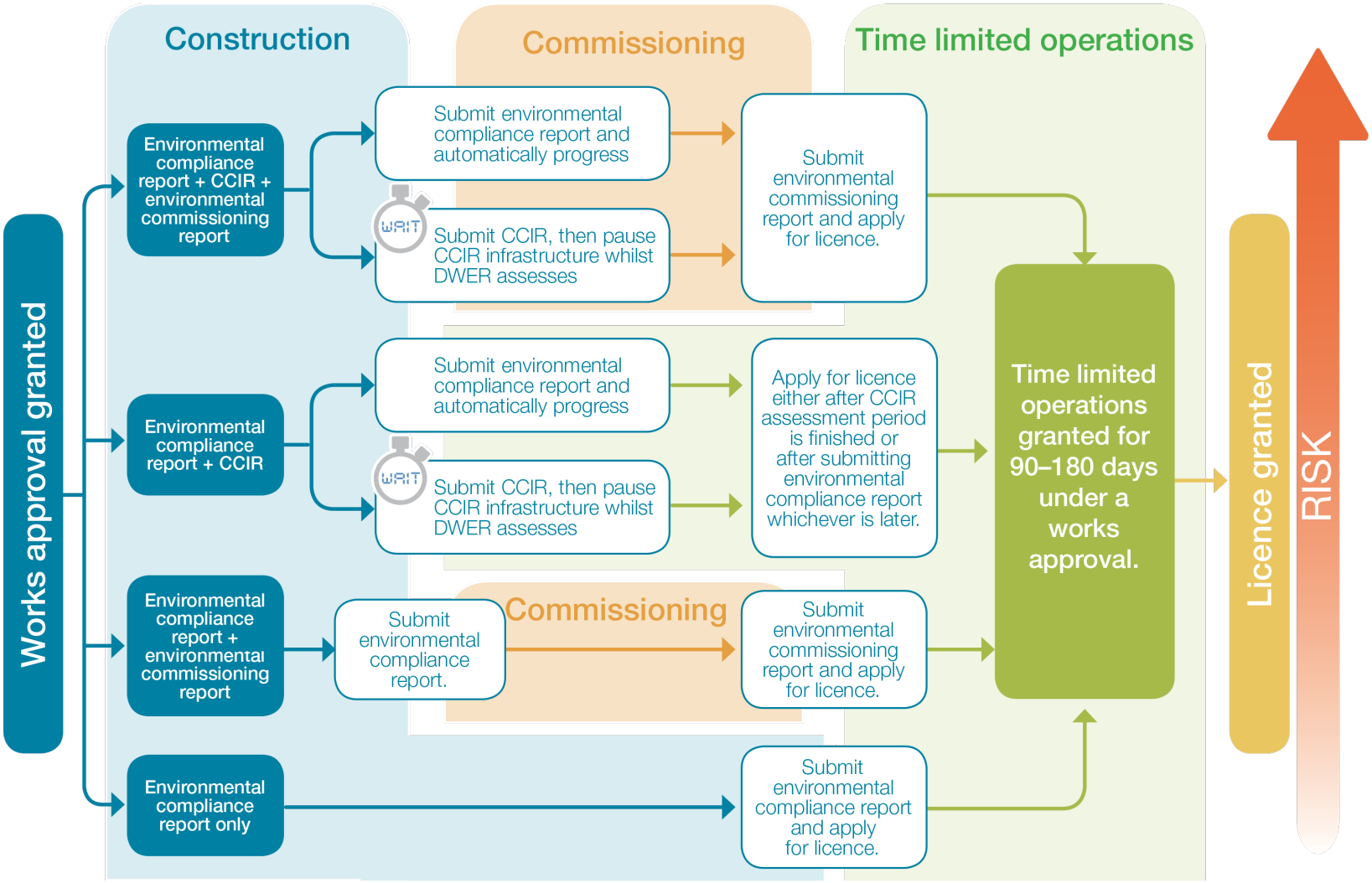


Figure 1: Transition from works approval to licence

4.1 Confirmation of works

There are three types of reports that the Department may require to be submitted by an applicant to demonstrate that they have met the requirements of the conditions of their works approval. The type of report(s) to be submitted and the specific requirements of what needs to be included in the reports, will be specified in the conditions of the works approval, these reports include:

- an Environmental Compliance Report;
- a Critical Containment Infrastructure Report; and / or
- an Environmental Commissioning Report (Refer: Section 4.2: *Environmental commissioning of works*).

Where multiple reports are required, the applicant can submit the reports as a combined document if they prefer. The Department will then consider the content of the submitted report(s) to verify that the works have been completed in accordance with the works approval conditions. In some cases the Department may use an independent third party to assist with verification of works.

Once all of the reports required under the works approval are submitted, the works approval holder may apply for a licence.

Environmental Compliance Report

All works approvals will require an Environmental Compliance Report to be submitted.

Verification through an Environmental Compliance Report is not a test of the performance of the installed works or of any emissions. It is documented confirmation that what has been installed is authorised by the works approval.

The Environmental Compliance Report may require a declaration from a professional with suitable qualifications or experience, to confirm that each item or component of infrastructure has been constructed with no material defects, and that all works approval conditions relating to the construction and installation of plant and equipment have been complied with. Where this is required it will be detailed in the conditions of the works approval.

Critical Containment Infrastructure Report

A Critical Containment Infrastructure Report (CCIR) may be required for premises that include containment infrastructure (e.g. for the purpose of storage and containment of waste). The purpose of the CCIR is for the Department to confirm that the environmental controls on containment infrastructure are properly constructed before materials are deposited in the containment cell.

The Department considers it appropriate, on the basis of risk, to ensure that critical containment infrastructure meets its requirements prior to environmental commissioning, or any form of operation commencing. With this type of infrastructure, the Department recognises both the potential environmental impact,

and the practical inability to easily rectify issues, once the containment infrastructure is in use.

Similar to the Environmental Compliance Report, the CCIR may require a declaration from a professional with suitable qualifications or experience, to confirm that each item or component of infrastructure has been constructed with no material defects, and that all works approval conditions relating to the construction and installation of the infrastructure have been complied with. Where this is required it will be detailed in the conditions of the works approval.

Once the CCIR has been submitted, the Department will assess the report. The works approval will include a condition that specifies the length of time that the works approval holder must wait while the Department is assessing the CCIR. No environmental commissioning, or operation of the containment infrastructure, can occur during this time.

The Department uses a risk based approach to determine the time required for the Department to assess the CCIR, known as the 'CCIR assessment period'. The CCIR assessment period will generally be between 10-45 business days, depending on the complexity and risk of the works.

Table 1 provides examples of typical timeframes required to assess a CCIR, during which environmental commissioning and time limited operations will be delayed. The CCIR assessment period is based on the risk posed by the infrastructure type. The examples provided are not prescriptive, and infrastructure may be subject to assessment periods that vary from the examples below. Assessment periods will be determined based on environmental risk.

Table 1: Typical CCIR assessment periods

Typical CCIR assessment period	Examples of infrastructure types
10 days	• medium risk ponds for the storage of leachate, wastewater, and liquid waste • medium risk tailings storage facilities
45 days	• high risk ponds for the storage of leachate, wastewater and liquid waste • high risk tailings storage facilities • high risk vat or heap leach containment structures
Operation halted until licence assessment complete and decision to grant or refuse is made.	• medium and high risk engineered, lined landfill cells

NOTE: Subject to risk assessment, the Department may use the CCIR to ensure that any type of infrastructure can be assessed ahead of time limited operations under a works approval.

If the Department completes its assessment of the CCIR before the end of the CCIR assessment period and is satisfied that the CCIR is compliant, the Department will notify the works approval holder that they can progress to environmental commissioning or time limited operations, as appropriate.

Environmental Commissioning Report

If environmental commissioning is permitted under the works approval, an Environmental Commissioning Report will be required to be submitted at the conclusion of the environmental commissioning phase. The requirements of the report will be conditioned in the works approval and will include:

- document the environmental commissioning activities undertaken;
- demonstrate the premises can operate to the specification detailed in the works approval application;
- demonstrate all environmental commissioning activities have concluded; and
- confirm emissions and discharges from the premises meet the required specifications.

Where environmental commissioning has occurred, submitting an Environmental Commissioning Report will allow the time limited operations phase to begin.

4.2 Environmental commissioning of works

Environmental commissioning is testing undertaken to validate actual environmental performance relative to predicted performance, as assessed by the Department under the works approval. This is a separate activity to environmental commissioning that may occur for production or to check that contractors have completed construction works as agreed.

Environmental commissioning may include testing the integrity of containment such as pipelines, liners or barrier systems, testing the performance of emission controls such as baghouses or filters, or testing waste digestion or treatment processes.

During environmental commissioning, emissions or discharges of waste may be permitted, subject to the works approval conditions. It is recognised that in optimising operations, emissions higher than normal operation may occur in the short term until the plant is stabilised. The Department's assessment will consider these emissions and discharges and ensure that during the proposed environmental commissioning phase they do not present an unacceptable risk to the environment, public health, or public amenity.

If an applicant wishes to environmentally commission under a works approval they must provide sufficient information in the works approval application so that the environmental commissioning activities can be assessed under the works approval. This would include, for example, the provision of an environmental commissioning plan. Applicants can seek advice from the Department on what information is required.

In determining whether to allow environmental commissioning under a works approval, the Department will consider the following:

- *Risk* - Does authorising operations under a works approval present a low risk to the environment?
- *Evidence* - Is there sufficient evidence (provided as part of the works approval application) to support a determination that the risk is low?
- *Efficiency and reliability of controls* - Will the controls for emissions and discharges from the premises consistently achieve the standard required by the conditions of the works approval?

Conditions will be incorporated into the works approval to manage the level of risk that proposed environmental commissioning activities pose.

4.3 Time limited operations phase

Conditions will be included in the works approval to regulate emissions and discharges that arise during the time limited operations phase. These conditions will be based on the design performance of the operations at the premises as assessed and conditioned in the works approval, and as provided in the works approval application.

This period of operations under the works approval will be set to between 90 and 180 calendar days to allow for the assessment of the licence application. Operation under licence conditions can begin when the licence is granted.

Assessment of the time limited operations phase allows the Department to streamline the licence assessment process. Where infrastructure and operation of the premises meet the design and operational specifications, the Department will apply the findings of the works approval assessment in its licence decision. The time limited operations phase conditions of the works approval may be transferred, as appropriate, into the operating licence.

Where the operation of the premises does not meet the design specifications as assessed in the works approval application, it is likely the premises will be unable to comply with time limited operations phase conditions.

Under these circumstances, the works approval holder should apply for an amendment to the works approval, in order to allow for reassessment of emissions and discharges. Operations will need to cease in this period, but if the amendment is granted, time limited operations may be allowed to recommence.

Where an occupier is not compliant with one or more conditions of a works approval, the occupier may have an obligation to report a discharge of waste under section 72 of the EP Act, or may otherwise be committing an offence under Part V Division 1 of the EP Act. The Department will consider any offences in accordance with its *Compliance and Enforcement Policy* (Refer: *Related documents*).

4.4 Staged construction or environmental commissioning

For some projects, infrastructure may need to be constructed, commissioned and operated in several stages. For example, the applicant may seek to construct a facility in two stages over a five-year period where one stage is commissioned and operated, and the second stage is constructed and commissioned while the first stage is operating. In these cases, completed stages of works would transition to operational status, subject to the conditions of a licence, while later stages of works would continue to be constructed, subject to the conditions of the works approval.

Following satisfactory completion of the second or subsequent stages of construction, the applicant may apply to amend the licence to incorporate the second stage of the works.

For staged construction projects, conditions relating to the environmental commissioning of later stages can be managed either through:

- the original works approval;
- an amendment or amendments to the original works approval;
- a new works approval; or
- the licence.

Staged construction may occur for new prescribed premises and for existing licensed premises. The same approach will be used for both types of premises, with the exception that where an existing licensed premises seeks to conduct staged construction, there may be a point at which a new works approval is active alongside an existing licence. Occupiers in such situations should be aware they will not be allowed to operate their new works under their existing licence unless the new works have been certified as compliant. For long term operations, the existing licence will require an amendment to provide any relevant conditions relating to the new works.

For more information on managing other changes to premises with staged construction, refer to Section 10: *Changes to prescribed premises*.

Where construction and environmental commissioning are proposed to be staged, the applicant must provide sufficient details including indicative timeframes in the works approval application so the Department is able to properly assess what is proposed, and make appropriate provisions in the works approval. Scoping meetings are recommended to determine the most appropriate combination of works approval and licence applications to allow for staged construction or environmental commissioning to occur.

For projects of high complexity or very large scale, the pathways to a time limited operations phase may change. Scoping meetings are recommended to determine the best pathway for such projects. Scoping meetings should be held before an application for works approval is submitted to ensure that the application can contain the required information. Circumstances may change during either the assessment period or the construction period, requiring alterations to the time limited operations

phase. For large scale or complex projects, occupiers should engage with the Department early and often to ensure pathways are understood and accepted.

5 Licences

A licence contains conditions that aim to prevent, control, abate or mitigate pollution or environmental harm as a result of the operation of prescribed premises.

Section 56 of the EP Act states that the occupier of any prescribed premises who causes or increases, or permits to be caused or increased, an emission, or alters or permits to be altered the nature and volume of the waste, noise, odour or electromagnetic radiation emitted, without holding a licence in respect of those premises commits an offence. A licence ensures there are no unacceptable impacts to the environment or human health.

When to apply for a licence

A licence application following a works approval may be submitted as soon as there is enough evidence to satisfy the Department that works have been completed in accordance with the conditions of the works approval. This occurs once the last report (Environmental Compliance Report, CCIR or Environmental Commissioning Report) is lodged. Once the final report is lodged, time limited operations will automatically begin.

Once the Department is satisfied all relevant conditions of the works approval have been complied with, the Department may accept a licence application. If the Department decides to grant a licence, it can be granted prior to the expiry date of the works approval.

If the works have not been completed satisfactorily in compliance with the conditions relating to the construction of the works approval, the Department must decline to deal with the application under section 57(2) of the EP Act, and operating the premises may become an offence at the expiry of any works approvals.

In order for the Department to process, assess and determine licence applications in a timely manner, it is essential for applicants to ensure that:

- licence applications are submitted as soon as the final report is submitted to the Department certifying the relevant works approval conditions have been complied with, so a licence can be determined before the expiry of the works approval; and
- all the information necessary to meet the Department's requirements are provided in the application. For further information on application requirements, refer to Section 12: *Applications for a works approval, licence, registration or amendment*.

6 Applications for a works approval, licence, registration or amendment

7 Clearing native vegetation

Part V Division 2 of the EP Act and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* set out the legal requirements for clearing native vegetation. Further guidance is available on the *Clearing permits* section of the Department website (Refer: *Related documents*).

Clearing native vegetation may also be authorised by the conditions of a works approval or licence. Section 62A(1)(c) of the EP Act allows conditions to be included in a works approval or licence, to minimise environmental harm. Environmental harm, for the purposes of clearing, includes removing, damaging or destroying native vegetation.

Clause 2(c) of Schedule 6 of the EP Act exempts clearing of native vegetation done in accordance with a works approval or licence from requiring a clearing permit. Applicants applying for a works approval which involves clearing native vegetation can choose to apply for either:

- a clearing permit using the relevant clearing application form, available on the *Clearing permits* section of the Department website (Refer: *Related documents*), and a works approval separately; or
- a works approval indicating that clearing of native vegetation is required and the Department will then validate the application and inform the applicant:
    - the clearing may be dealt with through conditions on the works approval;
    - an exemption is available for the clearing; or
    - a clearing permit application is required.

Applications to clear native vegetation as part of a works approval application must be made using the relevant section of the application form available on the Department website. The form includes instructions on requirements where clearing of native vegetation is proposed.

7.1 Clearing delegated to DEMIRS

The Department has delegated authority to the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) to assess and determine applications for clearing permits under Part V Division 2 of the EP Act for the purposes of:

- an activity authorised by or required by the *Mining Act 1978*, the *Petroleum and Geothermal Energy Act 1967*, the *Petroleum Pipelines Act 1969*, or the *Petroleum (Submerged Lands) Act 1982*; or
- an activity under a government agreement administered by the Department of Jobs, Tourism, Science and Innovation (DJTSI).

In these cases, the Department will forward applications for clearing permits to DEMIRS. Administrative agreements are in place between the Department and DEMIRS to support the delegation.

NOTE: For further information on the specific agreement relating to the clearing of native vegetation, refer to *Related documents* below for a link to the *Administrative*

agreement on the delegation of provisions for clearing of native vegetation for mineral and petroleum activities.

8 Registrations

An occupier of a premises whose activities are exclusively covered by the categories listed in Schedule 1 Part 2 of the EP Regulations may apply for the registration of their premises, instead of a licence. Schedule 1 Part 2 of the EP Regulations include activities which usually have a lesser risk of environmental harm than those under Schedule 1 Part 1.

These premises still require a works approval to authorise construction, as detailed in Section 3: *Works approvals*.

An activity listed in Schedule 1 Part 2 of the EP Regulations will be included in an existing licence for a Schedule 1 Part 1 premises without requiring a separate registration, where it is situated within the boundary of a licensed premises.

Registrations do not contain conditions. However, where an activity listed in Schedule 1 Part 2 of the EP Regulations lies within the boundary of a licensed premises, conditions may be applied to all activities.

Section 56 of the EP Act requires the occupier of prescribed premises to be licensed if they cause certain emissions (as outlined in Section 5: *Licences*). Occupiers should note the following:

- An occupier who applies for a registration does not commit an offence under section 56 of the EP Act in respect of those premises while the application is pending (regulation 5A(2) of the EP Regulations).
- If premises are registered, the requirement to be licensed for emissions (section 56 of the EP Act) does not apply to the occupier of those premises (regulation 5A(3) of the EP Regulations).

A registration may be cancelled by the Department under regulation 5A(4) of the EP Regulations, where the occupier of the premises:

- has been convicted in a court for an offence against the EP Act and / or its associated regulations and that offence relates to the premises; or
- has operated, conducted, managed, or controlled the premises in a manner which is detrimental to the environment.

Where a registration is cancelled, requirements under section 56 of the EP Act apply to the occupier of the premises. An occupier may apply to the Department for reinstatement of the registration. Under regulation 5A(6) of the EP Regulations, the Department may reinstate the registration if the occupier of the premises does not:

- contravene the EP Act or its associated regulations; or
- operate, conduct, manage or control the premises in a manner which is detrimental to the environment.

If the registration of the premises is reinstated, section 56 of the EP Act no longer applies to the occupier of the premises.

An occupier of a premises which falls within a category under Schedule 1 Part 2 of the EP Regulations may choose to seek a licence instead of seeking registration for their premises. A licence may be sought instead of a registration following the initial works approval or at a point after the premises has been registered.

There are no statutory provisions for amendments to registrations or for their formal surrender. The holder of a registration must notify the Department of any change in the information provided in the application for registration, or manner of operation of the registered premises (regulation 5M(1) of the EP Regulations). The holder of a registration may notify the Department of changes to their operation that mean a registration is no longer required, has become invalid or they wish to cancel their registration. Occupiers can provide notification to the Department via email.

A person who becomes the occupier of a registered premises, must notify the Department of that fact within 30 calendar days of becoming the occupier and pay the required fee or they will commit an offence (section 61 of the EP Act). On receipt of notification, the Department will make the required change to the record of registered prescribed premises.

Additional controls through industry-specific regulations may also apply to some categories of premises listed in Schedule 1 Part 2 of the EP Regulations. Refer to Section 1.3: *EP Regulations* in this Guide for examples.

9 Amendments

A works approval or licence holder can apply to amend their instruments under section 59 of the EP Act.

The Department can also initiate amendments to works approvals and licences at any time (Refer: Section 12: *Review of existing licences*).

A licence or works approval cannot be amended to change the location of prescribed premises as the original assessment undertaken is site-specific, and it would be inconsistent with section 52 of the EP Act. In these cases, the occupier must surrender the existing licence or works approval and apply for a new works approval and licence for the new location.

An occupier may also apply to alter the boundaries of an existing prescribed premises under section 59 of the EP Act.

Where mobile equipment which would cause a premises to become prescribed is proposed to be used at a location which is not an existing prescribed premises, section 52 of the EP Act requires a works approval to authorise the works (being the movement of mobile equipment to the new premises). Therefore, before work can begin, a works approval must be obtained. In recognition of the potentially short duration of work and site relocation factors associated with the use of mobile equipment, the Department will aim to expedite works approval applications for mobile equipment.

As covered in Section 3: *Works approvals*, where an occupier of a prescribed premises intends to construct, install or alter equipment or infrastructure, they are

committing an offence unless they hold a works approval or licence or other instrument that permits the proposed change.

10 Changes to prescribed premises

For premises already licensed, changes to the premises can be authorised through a works approval or licence amendment (section 53 of the EP Act).

The Department will retain discretion on whether a works approval or licence amendment application is appropriate. In determining whether a change to a premises requires a works approval or a licence amendment, the Department will consider whether:

- there is a change to the prescribed premises category, or the addition of a new premises category;
- it involves additional works and new emission sources not previously assessed;
- there are changes to containment structures not previously assessed; and
- the scale of the works, and the time required to assess the impact of the proposed change is considerable.

Where an applicant is unsure whether an application for a licence amendment or a works approval is appropriate, the applicant can discuss options with the Department. The Department will advise the applicant if the works can be assessed as a licence amendment.

Where an applicant has applied for a works approval considered suitable to be treated as a licence amendment, the Department will invite the applicant to declare, in writing, that the Department may treat the application for a works approval as an application for a licence amendment. Please note such declarations may be publicly advertised alongside the initial application.

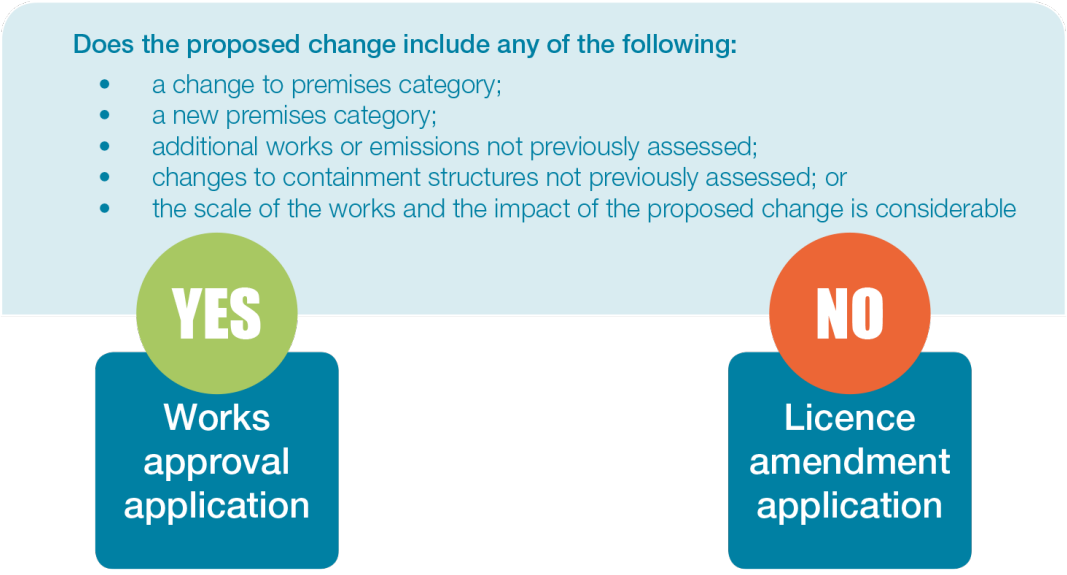


Figure 2: Considerations for applications to alter premises

Figure 2 outlines criteria that the Department will generally use to assess whether a change to a premises is best managed with a works approval or licence amendment.

NOTE: The criteria listed in Figure 2 are indicative only. They are not mandatory requirements, and the list is not exhaustive.

Maintenance

Where general maintenance is required to maintain the efficient operation of any pollution control equipment or procedure, the occupier is exempt from needing authorisation under a works approval or licence in respect of that general maintenance (sections 53(1)(g) and 53(2)(d) of the EP Act).

11 Transfers

The EP Act and EP Regulations require a new occupier of a prescribed premises to comply with the conditions of any existing works approval or licence and apply to transfer the works approval or licence within 30 days of the 'relevant day' of becoming the new occupier. The 'relevant day' is the day the new occupier becomes the occupier (section 61 of the EP Act). Documentary evidence of that date must be provided. This application must include a payment of two fee units as a recording fee. Failure to comply with these requirements constitutes an offence under the EP Act. The transfer application form is available on the *Licences and works approvals* section of the Department website.

Where a works approval or licence is in force, the EP Act provides for the new occupier to be considered the holder of that works approval or licence while an application to transfer the works approval or licence is pending.

The EP Act requires a person who becomes the new occupier of a prescribed premises to comply with the conditions of any works approval or licence in force at those premises. This obligation exists from the 'relevant day'.

The EP Regulations do not provide for a transfer of registration. However, the EP Regulations provide for the Department to make alterations to the register in the event a person notifies the Department they have become the occupier of a registered premises and the recording fee has been paid [regulation 5B(3)]. Notifications of a change in ownership of registered premises can be performed using the transfer application form for *Licences and works approvals* available on the Department website.

12 Review of existing licences

The Department determines the duration of licences in accordance with *Guidance Statement: Licence Duration* (section 63 of the EP Act) (Refer: *Related documents*). The *Guidance Statement: Licence Duration* states the Department's preference for longer-term licences, up to a maximum of 20 years.

In accordance with section 59(2) of the EP Act, the Department may initiate a review of an existing licence under a range of circumstances including in accordance with the *Guidance Statement: Risk Assessments* (Refer: *Related documents*).

The Department also carries out a program of periodic licence reviews. In determining when to do a licence review, the Department will consider:

- incident or event reports provided by the licence holder under section 72 of the EP Act;
- information submitted to satisfy licence reporting requirements (e.g. Annual Environmental Reports or monitoring data);
- new information that changes the risk assessment for the premises;
- the length of licence duration;
- results from compliance inspections conducted by the Department;
- complaints received;
- enforcement action taken;
- changes to legislation or regulatory policy;
- publication of guidelines or other guidance material;
- current scientific knowledge related to the operations on the premises;
- actions and decisions by other Western Australian or Commonwealth departments or agencies;
- whether Department-initiated amendments to a licence have occurred; and
- any other circumstances the Department considers relevant.

When it is determined a review is warranted, the Department will:

- advise the licence holder of the review and seek comments from them;
- advise direct interest stakeholders and seek comments from them; and
- place a notification on the Department website.

As a result of a licence review, the Department may:

- review, and if necessary, change controls to ensure they remain effective and efficient in both design and operation;
- require further information from the licence holder;
- identify additional risks or changes to the context of risks, which may result in a revision of risk ratings and regulatory controls; and / or
- proceed to suspend or revoke the licence where the Department is satisfied that:
    - there has been a serious breach of any conditions; or
    - false or misleading information has been provided; or
    - the current address of the holder of the licence is unknown.

Regulatory controls will be determined and applied according to the *Guidance Statement: Risk Assessments* and *Guidance Statement: Setting Conditions* (Refer: *Related documents*).

As part of the review process, the licence holder will be provided with at least 21 calendar days (section 59B(3)(c) of the EP Act) to comment on the draft revised licence and draft decision report, including the opportunity to propose alternative controls to address the identified risks.

Once a review is complete and a decision is made, the Department will:

- notify the licence holder;
- notify all direct interest stakeholders; and
- publish a copy of the revised licence (including any amendments) and the decision report on its website to inform the public.

Revised licences are considered to be Department-initiated amendments and are subject to the right of appeal by both the licence holder (section 102(2) of the EP Act) and third parties (section 102(3)(b) of the EP Act). An aggrieved person may lodge an appeal with the Minister within 21 calendar days of the decision (section 102(2) of the EP Act). Notification and publication of the revised licence will include details on how an appeal can be lodged.

13 Applications for a works approval, licence, registration or amendment

13.1 Statutory application requirements

Sections 54 (works approvals) and 57 (licences) of the EP Act contain the statutory requirements for new works approval and licence applications. The requirements for an application to amend an existing works approval or licence are contained in section 59B(1) of the EP Act. Regulation 5B of the EP Regulations contains the requirements for an application for registration of a premises.

Applications for works approvals, licences and amendments must be:

- made in the form and manner approved by the Chief Executive Officer (CEO);
- accompanied with the correct fee prescribed in the EP Regulations; and
- supported by plans, specifications and other documents and information, including a summary, as the CEO requires.

Applications for registrations must be:

- in a form approved by the CEO;
- made by the occupier of the premises;
- accompanied by a plan showing the boundaries of the land on which the premises are situated and the layout of the premises; and
- accompanied by a fee of 24 units unless the occupier of the premises holds a licence in respect of the premises.

The Department provides general assistance only in relation to completion of an application form and preparing the supporting documentation for an application. Applicants may choose to seek detailed advice and assistance from their own professional advisors or external experts about any environmental studies, plans or reports required to support their application. The decision of who to seek advice or consultation from is the applicant's choice. The Department is not able to provide any recommendations for specific advisors or consultants. If an applicant's decision is to engage expert assistance, they should satisfy themselves of the expert's experience, qualifications and competency to undertake the work required prior to engaging them.

Further information and instructions on supporting information required with an application for works approval, licence or amendment can be found in the *Licences and works approvals* section of the Department website, including the application form and other guidance material (Refer: *Related documents*).

13.2 Application forms

Application forms are available on the Department website and enable applicants to apply for:

- a works approval;
- a works approval including clearing of native vegetation;
- a licence;
- a licence renewal;
- the amendment of a licence or works approval;
- the surrender of a licence or works approval;
- the transfer of a licence or works approval; or
- the registration of a premises.

The application forms provide instruction and guidance on how to complete the application, and what additional information is required.

With the exception of statutory notices, all written correspondence from the Department about an application or instrument will be made by email. Applicants must provide a valid email address in the application form, through which they agree to receive all electronic correspondence. The applicant is required to sign a declaration that they have provided a valid email address for all written correspondence and a valid postal address for the service of all statutory notices under the legislation. The Department will rely on the email address provided by the applicant and will not accept liability for any failure of the applicant to receive email from that email address.

13.3 Prescribed fees

Applications for a works approval, licence, amendment, registration or transfer are required to be accompanied by the prescribed fees. For further information, see the *Fact Sheet Industry Regulation fees* (Refer: *Related documents*).

For fee calculators, see *Licenses and works approvals / Fees* on the Department website.

Works approval application fees

Fees for works approval applications are determined by the cost of the works, including all capital costs associated with the construction and establishment of the proposed works under the application. Regulation 5BA of the EP Regulations provides that:

- the prescribed fee specified in Schedule 3 is determined based on the cost of the works that are the subject of the application; and
- in determining the cost of works for the purposes of this regulation, no account is to be taken of:
  - the cost of land;
  - the cost of buildings to be used for purposes unrelated to the purposes in respect of which the premises are, or will become, prescribed premises; or
  - consultancy fees paid, or to be paid, in relation to those works.

Licence application fees

The fee for the first year of application is paid at the time of lodging the application, but the fee period does not begin until the licence is granted. The date of granting the licence becomes the anniversary date each year, and a new annual fee is required in advance of each anniversary date for the coming annual fee period. Licence fees should be based on an accurate prediction of the discharges expected to occur during the first year. These predictions should be consistent with the information provided in the application for licence and used to assess the discharges from the premises. For subsequent years, measurement of actual discharges can be used to determine annual licence fees.

Amendment application fees

The EP Regulations set the prescribed fees for amendments to works approvals or licences. Regulation 5BB of the EP Regulations provides that the fee prescribed for an application for an amendment to a works approval or licence is based on a unit value of $6.80 per fee unit, calculated for:

- a single category of prescribed premises to which the works approval or licence relates - by using the unit number corresponding to the prescribed premises category in Schedule 4, Part 1 of the EP Act; or
- multiple categories of prescribed premises to which the works approval or licence relates - by using the highest unit number corresponding to the prescribed premises categories in Schedule 4, Part 1 of the EP Act.

The prescribed fee for an amendment is a one-off fee when an application for an amendment to a works approval or licence is submitted. In determining the fee applicable to an application for amendment, the Department will:

- consider a request for multiple amendments to a works approval or licence as a single amendment if submitted in a single application;
- use the design capacity of the category of prescribed premises for works approvals and licences to calculate the fee;
- use the higher unit number to calculate the fee where a works approval or licence has multiple prescribed premises categories;
- deem no fee will be applicable when an amendment is initiated by the CEO;
- deem no fee will be applicable for amendments prescribed in section 59 of the EP Act as follows:
    - a clerical mistake or unintentional error or omission;
    - a figure which has been miscalculated;
    - the misdescription of any person, thing or property;
    - making an administrative change to the format of the works approval or licence which does not alter the obligations of the occupier of the premises to which the works approval or licence relates;
    - deleting any discharge point or emission point which is no longer in use;
    - amending the works approval or licence to conform with an approved policy or prescribed standard or with an exemption conferred under this Act;
    - amending the works approval or licence to ensure that it is not contrary to, and that it otherwise accords with, a Ministerial Statement; or
    - amending the works approval or licence to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise).

Transfer fees

Details of the prescribed fee for the transfer of a licence or works approval, and the recording fee for alterations to the occupier of registered premises are contained within the *Application form: Transfer works approval or licence or notify new occupier of registered premises* on the Department website (Refer: *Related documents*).

13.4 Refunds

Annual licence fees can be refunded in full or in part at the discretion of the Department, on application.

Annual licence fee refunds can be sought for:

- the premises component if the premises ceases to be prescribed during the period of the licence; and / or
- the difference in the discharge component where the quantity of waste discharged from the premises during the fee period (‘the actual discharge’) is

less than the quantity used to determine the licence fee that was paid for that period.

A premises component fee refund application must be accompanied by written information explaining why the premises are no longer prescribed premises.

Applications for a discharge fee refund should be submitted within three months of the end of the licence fee period. A discharge component fee refund will be considered if the Department is satisfied that there is a difference between the actual waste quantities discharged and the waste discharge estimated and paid for, based on the evidence supporting the claim and provided in the application for the refund. The applicant must clearly demonstrate the basis and justification for the refund.

The *Application form: Fee refund* and further instructions are available on the Department website.

13.5 Scoping and pre-application meetings

A prospective applicant may request a scoping meeting with the Department prior to submitting their application if:

- the proposal is complex;
- the proposed activity has the potential to cause a 'significant' impact on the environment or public health;
- the prospective applicant wants to discuss how they intend to avoid or mitigate the impacts of their proposal; and / or
- the applicant wants to discuss what information is required in their application.

Scoping meetings are not a statutory requirement and will be accepted at the discretion of the Department. A scoping meeting is not a substitute for applicants obtaining professional assistance for the preparation of an application, supporting documentation, environmental studies, and / or the interpretation of legal matters.

Requests for scoping meetings and scoping advice must be made via email to the Department and be accompanied by summary information about the location; any environmental studies undertaken or planned; and the proposed activities, works, and emissions. In accordance with the Department's *Customer Service Charter*, the Department will seek to respond to email requests for scoping meetings within 10 business days (Refer: *Related documents*).

14 Processing applications

14.1 Timeframes

The Department's target timeframe to decide any application begins on the day the application is received, or on the next business day if it is received on a public holiday or outside normal business hours. Timeframes are not statutory; however they are in place to provide efficiency targets for the Department and some degree of certainty for applicants.

The Department's target timeframe for completing the assessment of an application is 60 business days. This includes applications for:

- licence or works approval;
- licence or works approval amendment;
- transfer of a licence or works approval;
- surrender of a licence or works approval; and
- registration.

The 60 business day timeframe includes the following processes (where applicable):

- validating the application and supporting information;
- public advertising of the works approval or licence application;
- direct referral of the application to people or public authorities with a direct interest in the application or other stakeholders (if applicable);
- assessing the application and considering submissions lodged;
- drafting the decision report, works approval, licence, registration or amendment (as appropriate); and
- considering applicant comments on drafts.

The timeframe does not include time taken by the applicant to:

- pay the prescribed fee;
- submit further information in response to a written request; or
- respond to draft documents or instruments, or a notice of the Department's intended refusal to grant.

Comprehensive and well supported applications and responsiveness to the Department's requests for information by applicants can reduce the frequency and length of delays in the assessment timeframe.

14.2 Public advertising of applications and consultations

The EP Act requires applications for works approvals or licences, which meet the Department's requirements and are accepted, to be advertised in a prescribed manner. The Department may also choose to advertise other applications (for example, licence amendment applications that involve substantial works) to enable public comment on the application. The Department may also publish supporting documentation to an application on its website.

Applications are advertised once they have been accepted for assessment and the required fees have been paid.

The Department advertises a standard weekly notification each Monday in the Public Notices section of *The West Australian*, which directs the community to the Department website. In some cases, an application may also be advertised in a local community newspaper.

Interested parties seeking to make comment on an application are directed to forward submissions to the Department at:

- info@dwer.wa.gov.au; or
- Locked Bag 10, Joondalup DC, WA 6919.

The Department will seek comments directly from people and public authorities who, in the Department's opinion, may have a direct interest in the application. Stakeholders or parties with a direct interest are determined on a case-by-case basis and may include:

- a public authority from which a statutory approval is required, relating to the environmental impact of the premises;
- a public authority whose decision-making functions are directly related to the subject of the application;
- a person or public authority that has been in communication with or has provided correspondence to the Department in relation to the subject of the application;
- a person who has a direct legal connection to the operation or ownership of the premises; and
- a public authority or agency whose technical advice or opinion may be required to inform the Department's decision.

Once the Department determines the grant of an instrument, this decision and a copy of the granted instrument are published on the Department website. The publication of the decision provides the opportunity for members of the public to lodge an appeal if they wish. For further information on appeals, refer to Section 18: *Appeals*.

Confidential information in applications

Applicants should note any information contained in their application would normally be published (with personal information redacted) on the Department website, as outlined above. Applicants may request that certain information contained in the application is exempt from publication, due to the information being commercially sensitive or confidential. These requests must be specified in the relevant section of the application form.

Requests for exemption will be assessed by the Department on a merit basis. The Department will take reasonable steps to protect genuinely confidential or commercially sensitive information. Where the Department determines information is of a confidential or commercially sensitive nature, those aspects of the application will not be published on the Department website and will not be referred to third parties for comment. However, it should be noted this information may be able to be accessed via an application for release under the *Freedom of Information Act 1992*.

Where the Department determines the information is not of a confidential or commercially sensitive nature, the applicant will be advised and provided with the opportunity to either agree with that decision, or to amend or withdraw the application. If the applicant disagrees with the Department's decision, the application will be placed on hold until the Department's decision is reviewed under processes

and timeframes typical of Freedom of Information requests made under the *Freedom of Information Act 1992*. It is important to note this process is not governed by the *Freedom of Information Act 1992*, but rather the Act provides a good example of a review process that can be applied to applications under the EP Act.

14.3 Assessment and decision-making

The Department will take into account the object and principles of the EP Act (section 4A) when making a decision on an application. The Department's *Guidance Statement: Risk Assessment* outlines this process (Refer: *Related documents*).

In undertaking an assessment, the Department may also consider:

- comments received from any person or public authority with a direct interest in the subject of the application;
- whether the application is consistent with approved policies, guidelines and standards or decisions made by other decision-making authorities;
- the potential impact of emissions and discharges from the premises on the environment and human health;
- proposed actions that could result in environmental harm;
- the identified risk of potential environmental harm;
- the acceptability or otherwise of discharges and emissions;
- whether the applicant's proposed control and mitigation measures are adequate; and
- whether additional regulatory controls are required.

The Department will record its decision-making process in assessing an application in a decision report. This decision report will reflect the information obtained and used in the assessment.

In the following circumstances, an applicant will be contacted about the progress of their application:

- if any further information is required for the initial validation of the application;
- upon the application being validated, which will include an invoice for the application fee;
- when the application is accepted and progressed to assessment following receipt of the application fee;
- if any further information is required to facilitate the full risk-based assessment of the application (see below for further details);
- when the draft decision report and draft works approval or licence or draft revised works approval or licence have been finalised for applicant review and consultation; and
- once the final applicant review period has elapsed, or is waived by the applicant, and the works approval or licence is granted or refused.

If the assessment process is put on hold at any point, the Department will inform the applicant.

15 Licence renewal and annual fees

15.1 Licence renewal

Licences are issued for a limited period, up to a maximum of 20 years. The duration of a licence will be determined with reference to the *Guidance Statement: Licence Duration* on the Department website (Refer: *Related documents*).

When a licence reaches its expiry date, it ceases to have effect. It is the responsibility of licence holders to ensure their licence continues to be valid.

If a licence is required beyond the expiry date, it is incumbent on the licence holder to apply for a licence renewal to replace the expiring licence prior to the expiry date.

Prior to submitting an application, the licence holder needs to have sufficient information to satisfy themselves that their environmental impact, as previously assessed by the Department has not materially altered.

The Department recognises that sensitive receptors and pathways can change over extended licence periods and the Department's responsibility is to ensure the currency of its impact on the environment and assessment respectively.

Where an expiring licence was issued with a duration of less than five years, the Department may allow for a renewal application to contain less information than would otherwise be required. Such an arrangement will generally only be permitted where there are no meaningful changes to the operations under the licence or to the emissions from the premises or to the environment around the premises.

The Department will send the licence holder a letter 12 months before their licence expires to advise them of the approaching expiry date. This letter will also outline the scope of the renewal licence application required and invite the licence holder to discuss a new application with the Department. It is the responsibility of licence holders to ensure their licence is current and valid.

The Department will send a licence holder a second reminder letter approximately 120 business days before the expiry date. Under regulation 5CB(1) of the EP Regulations, a licence holder must apply for a licence renewal more than 70 calendar days before the expiry of the existing licence. Regulation 5CB(2) and (3) of the EP Regulations state that late fees apply to an application for a licence to replace an existing licence made 70 or less calendar days before the expiry date of the licence.

Applications should be made as early as possible following the first letter. If an application for a licence renewal is not made within sufficient time to enable the Department to access it and if appropriate, issue a new licence before the expiry date, the existing licence will expire and the occupier will be without a valid licence. The occupier may commit an offence if they continue to operate without a licence. The Department cannot guarantee renewal applications made less than 60 business

days before the expiry date will be assessed and a new licence issued before the previous licence expires.

An application for a licence to replace an expiring licence can be made in the same manner and using the same form as specified in Section 13.2: *Application forms*.

15.2 Annual fee payment

Regulation 5DA(3) of the EP Regulations requires annual licence fees to be paid before the anniversary of the grant of the licence, for the subsequent period. Under Regulation 5DA(4), if the annual licence fee is not paid by the anniversary date, but within 30 days after the anniversary date, a late fee of 10 fee units is payable as well as the annual licence fee. For payments received 30 days or more after the anniversary, a late fee of 20 fee units is payable.

A reminder is sent to licence holders approximately 70 business days prior to the anniversary date of the grant of the licence. The reminder contains instructions on how to submit an application for annual licence fees.

Under regulation 5DA(5) of the EP Regulations, if the annual licence fee is not paid within 60 days after the anniversary date, or an applicable late fee is not paid, the Department may suspend or revoke the licence under section 59A of the EP Act.

Industry Regulation fact sheet: Industry Regulation fees is available on the Department website (Refer: *Related documents*). It provides further guidance on the methods for calculating licensing and works approval fees for prescribed premises.

16 Land use planning

Previous guidance on land use planning has been withdrawn and replaced by this Guideline.

Land use planning and environmental approvals are different statutory processes. The Department's statutory roles and functions under the EP Act may intersect with the land use planning functions of State and Local Government (and the State Administrative Tribunal on appeal) and often environmental and planning approvals are required at similar times.

A decision under Part V of the EP Act on an assessment of an application may be made prior to the final determination of a planning application. However, the Department recognises the importance of land use planning in the context of the delivery of appropriate public health and environmental outcomes and will have regard to the processes and views of other authorities in its decision making process.

In assessing an application, applicants should note the Department may:

- decline to make a regulatory decision on an application where a planning decision prevents implementation of the application while that decision has effect;
- seek comment from Local Government Authorities on applications for works approvals and licences;

- assess applications for works approvals and licences concurrently with applications for planning approval; and
- consider the duration of any planning approval when determining the duration of the works approval or licence to be granted (in accordance with the *Guidance Statement: Licence Duration*) (Refer: *Related documents*).

The Department will have regard to the above information in determining whether to grant a works approval or licence, or to provide its intention to grant or refuse a works approval or licence.

An instrument granted by the Department only provides a defence for the occupier for offences under Part V, Division 3 of the EP Act, provided the conditions contained within the licence have been complied with and not for any offences under planning legislation. An occupier who begins works on or operates a prescribed premises without the necessary approvals from planning authorities does so at its own risk.

17 Termination of works approvals and licences

17.1 Surrender by applicant

Section 59A(2)(e) of the EP Act allows the holder of a works approval or licence to apply to the Department to surrender their works approval or licence when the instrument is no longer required.

Section 59B of the EP Act requires an application to surrender a works approval or licence to:

- be made in the manner and form approved by the CEO;
- be accompanied by the fee prescribed by or determined under the regulations;
- be supported by any plans, specifications and other documents and information required by the CEO; and
- include a summary of supporting documentation and information.

The *Application form: Surrender works approval or licence* is available on the Department website (Refer: *Related documents*).

17.2 Revocation

Section 59A of the EP Act allows for the Department to revoke or suspend a works approval or licence when:

- the CEO is satisfied there has been a breach of any of the conditions to which the works approval or licence is subject;
- the premises to which the licence relates are exempted by the regulations from requiring a licence;
- information contained in or supporting the application was false or misleading;

- the current business address of the holder of the works approval or licence is unknown;
- the holder of the works approval or licence has applied to the CEO to surrender the works approval or licence; or
- the annual licence fee is not paid within 60 days after the licence anniversary date, or an applicable late fee is not paid.

Prior to granting or refusing an application to surrender a licence or works approval, it is the Department's role to assess any ongoing risks to public health or the environment as a result of the activities undertaken on the premises.

Should any risks be identified, the Department will assess the most appropriate way for these to be managed. This may include:

- ongoing management of the site under the *Contaminated Sites Act 2003*;
- the issuance of a closure notice under section 68A of the EP Act; or
- enforcement action as appropriate.

18 Appeals

The Appeals Convenor investigates and provides advice to the Minister for Environment about appeals lodged. The Department's role in the appeals process is limited to the provision of advice to the Appeals Convenor under section 106(1)(b) of the EP Act and to the implementation of appeal decisions by the Minister under section 110(1) of the EP Act.

Part VII of the EP Act provides an opportunity for the applicant and in some cases any person, to appeal decisions made about works approvals and licences.

Subject to section 105 of the EP Act, applicants and works approval or licence holders have appeal rights under section 102 of the EP Act in relation to:

- a refusal to grant, or a refusal to transfer a licence or works approval;
- conditions applied to a licence or works approval or transfer of these instruments;
- any amendment to a licence or works approval; and
- revocation or suspension of a licence or works approval.

Subject to section 105 of the EP Act, third parties have appeal rights under section 102 of the EP Act in relation to:

- conditions applied to a licence or works approval or transfer of these instruments; and
- any amendment to a licence or works approval.

A decision to amend a works approval or licence does not continue to have effect pending the outcome of an appeal against that decision by the applicant (section 102(5) of the EP Act). In all other cases, the decision continues to have effect pending the outcome of the appeal. In the case of a works approval, this means any works carried out before the determination of a third party appeal are at the works

approval holder's own logistical and financial risk. If the appeal is successful it may result in the imposition of new or amended conditions on the works approval not compatible with works that may have been undertaken (see section 102(4) of the EP Act).

Appeals must be lodged with the Appeals Convenor and received within 21 calendar days of the date the works approval or licence holder was notified of the decision.

Decisions on works approvals and licences granted and open for appeal are published on the Department website.

Further information is available from the Office of the Appeals Convenor website (Refer: *Related documents*), including an appeal form, appeal information sheet for works approvals and licences, and the ability to search for active appeals or finalised appeal decisions.

Related documents

Document title / Link
Administrative agreement on delegation of provisions for clearing of native vegetation for mineral and petroleum activities
Application for licence fee refund
Application form: Surrender works approval or licence
Application form: Transfer works approval or licence or notify new occupier of registered premises
Clearing permits
Compliance and Enforcement Policy
Customer Service Charter
Department of Justice, Parliamentary Counsel's Office website
Department of Water and Environmental Regulation (DWER) website
Environmental Impact Assessment (Part IV Divisions 1 and 2) Procedures Manual 2016
Guidance Statement: Decision Making
Guidance Statement: Licence Durations
Guidance Statement: Risk Assessment
Guidance Statement: Setting Conditions
Industry Regulation fact sheet: Industry Regulation fees
Licences and works approvals
Licenses and works approvals / Fees
Licences and works approvals / Publications
Office of the Appeals Convenor
Regulatory best practice principles
Statement of Environmental Principles, Factors and Objectives

Acronyms

Acronym	Full Name
CEO	Chief Executive Officer
CCIR	Critical Containment Infrastructure Report
DEMIRS	Department of Energy, Mines, Industrial Regulation and Safety
DWER	Department of Water and Environmental Regulation
DJTSI	Department of Jobs, Tourism, Science and Innovation
EPA	Environmental Protection Authority
EP Act	*Environmental Protection Act 1986*
EP Regulations	*Environmental Protection Regulations 1987*
WA	Western Australia

Glossary

Term	Definition
Anniversary Date	The recurrent date in each subsequent year of the date of granting the licence.
Certify	For an occupier to provide evidence that works have been completed to the required standard.
Condition	A restriction or limitation as stated and applied under a works approval or licence.
Construction Phase	A period of time were the proposed infrastructure is constructed, where emissions and discharges are linked to the construction and not operation of the plant.
Critical Containment Infrastructure Report (CCIR)	Report to demonstrate that a premises critical containment infrastructure is suitable to receive waste.
Delegated Officer	The CEO of the Department, or an employee of the Department who, by virtue of their position, holds a statutory delegation from the CEO under section 20 of the EP Act.
Environmental Commissioning Phase	A period of time allowing for stabilisation and optimisation of the process following input of raw materials under operating conditions (including emissions) to confirm that emissions meet predicted levels prior to ongoing operation.
Environmental Commissioning Report	Report on any commissioning activities that have taken place and a demonstration they have concluded, with focus on emissions and discharges, waste containment and other environmental factors.
Environmental Compliance Report	Report used to satisfy that works have been constructed in accordance with a works approval.
Instrument	Works approval, licence or registration for prescribed premises.
Licence	A licence granted and in force under Part V Division 3 of the EP Act.
Time Limited Operations Phase	Operations permitted under a works approval, subject to conditions, while an application for licence is assessed.
Works Approval	An approval required under sections 52 and 53 of the EP Act to change a premises to become a prescribed premises or make changes to a licensed premises.